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Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY DUPLICATE

JAN 28 1998

97-182

EX PARTE ATTORNEY FILED

The Honorable Bob Graham  
United States Senator  
P.O. Box 3050  
Tallahassee, Florida 32315

RECEIVED

JAN 30 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Senator Graham:

Thank you for your letter dated December 16, 1997, on behalf of your constituent, Chairman Gary Bartell, Board of County Commissioners, Citrus County, Florida, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter and your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

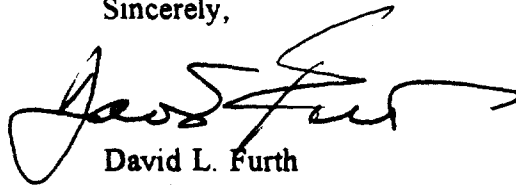
The Honorable Bob Graham

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", with a large, stylized flourish extending from the end of the name.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Bob Graham  
Florida



## United States Senate

Washington, D.C.

Date 12/16/97

WFB  
97-182  
7575

Ms. Judith Harris, Director  
Federal Communications Commission  
Office of Legislative Affairs  
1919 M Street, Room 808  
Washington, DC 20554

Enclosed is a letter from one of my constituents who has concerns which come under the jurisdiction of your agency.

I would appreciate your reviewing the information that has been presented and providing me with a written response. Please send your reply to the attention of:

Ms. Marcia K. Rivenbark  
Office of Senator Bob Graham  
P.O. Box 3050  
Tallahassee, FL 32315

Phone 850-422-6100  
Fax 850-422-0359

Your cooperation and assistance are appreciated.

With kind regards,

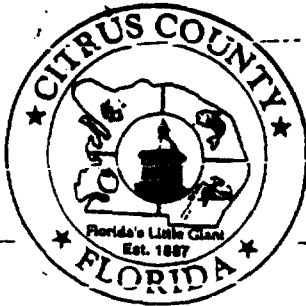
Sincerely,

A handwritten signature of Bob Graham in cursive script.

United States Senator

Constituent's Name:

GARY BARTELL



# Board of County Commissioners

## Executive Offices

111 West Main Street, 3rd Floor, Inverness, Florida, 34450

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GRAHAM

SENATOR

November 25, 1997

DEC 1 1997

EAMPA EC

The Honorable Bob  
United States Sena  
524 Hart Senate O  
Washington, DC 2

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comgen  
90034

Dear Senator Graha:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

**Cellular Towers - Radiation:** Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

The Honorable Bob Graham

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November 25, 1997

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: - Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryi Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Gary Bartell, Chairman

Citrus County Board of County Commissioners

GB;jel

cc: Honorable Bob Graham  
United States Senate  
101 E. Kennedy Blvd., Suite 3270  
Barnett Plaza  
Tampa, FL 33602